

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HARVARD REAL ESTATE-ALLSTON, INC.

Plaintiff,

v.

KMART CORPORATION,

Defendant.

Civil Action No. 04-12249-DPW

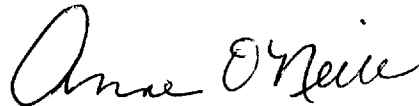
AFFIDAVIT OF ANNE O'NEILL

Anne O'Neill states under the penalties of perjury:

1. I am an employee of Kmart Management Corporation ("Kmart"). I make this affidavit on my own personal knowledge for consideration by this Court in support of the Opposition of Kmart Corporation to Plaintiff's Motion to Remand to the Boston Municipal Court, Brighton Division, and for Costs and Attorney's Fees, Pursuant to 28 U.S.C. § 1447(c).
2. I have been employed by Kmart since 1981 and presently hold the position of Lease Administrator. My responsibilities at Kmart include: reviewing and processing Common Area Maintenance ("CAM") invoices, revising monthly CAM escrows based upon lease language, logging incoming mail and responding to store inquiries on CAM payables.
3. As of January 2004, I am responsible for the reviewing and processing of CAM invoices from Harvard Real Estate-Allston, Inc. ("Harvard")

for the leased premises (the "Premises") located within the shopping center commonly known as the Brighton Mills Shopping Center, situated in Brighton, Massachusetts and leased by Kmart under that certain commercial lease dated January 26, 1978, formerly between Paul A. Faraca and Marvin Shiller, Trustees, as landlord and Caldor, Inc. Mass., as predecessor in interest to Kmart as tenant (the "Lease"). I am familiar with prior CAM billings based upon my review of the file.

4. On October 25, 2004, when Kmart removed this proceeding to this Court, Harvard claimed that Kmart owed it \$113,687.47 in past due CAM charges¹. Of this amount \$38,367.75 is part of the "cure claim" and therefore subject to the jurisdiction of the bankruptcy court.



Anne O'Neill

SUBSCRIBED AND SWORN TO

Before me on this 13th day of December, 2004



Notary Public

My Commission Expires:

CATHY A. NEUNER
Notary Public, Macomb County, MI
My Commission Expires Dec. 21, 2006

¹ After October 25, 2004, Kmart has remitted to Harvard payments totaling \$26,587.30 towards these charges.